

**657—35.13(17A,272C) Subpoenas.****35.13(1) *Issuance of investigatory subpoenas.***

a. The board's executive secretary/director or designee may, upon the written request of a board investigator or on the executive secretary/director's own initiative, subpoena books, papers, records, and other real evidence which the executive secretary/director determines are necessary for the board to decide whether to institute a contested case proceeding. In the case of a subpoena for mental health records, each of the following conditions shall be satisfied prior to the issuance of the subpoena:

- (1) The nature of the complaint reasonably justifies the issuance of a subpoena;
- (2) Adequate safeguards have been established to prevent unauthorized disclosure;
- (3) An express statutory mandate, articulated public policy, or other recognizable public interest favors access; and
- (4) The patient was notified and an attempt was made to secure an authorization from the patient for release of the records at issue.

b. A written request for a subpoena or the executive secretary/director's written memorandum in support of the issuance of a subpoena shall contain the following:

- (1) The name and address of the person to whom the subpoena will be directed;
- (2) A specific description of the books, papers, records or other real evidence requested;
- (3) An explanation of why the documents sought to be subpoenaed are necessary for the board to determine whether it should institute a contested case proceeding; and
- (4) In the case of a subpoena request for mental health records, confirmation that the conditions described in subrule 35.13(1), paragraph "a," have been satisfied.

c. Each subpoena shall contain:

- (1) The name and address of the person to whom the subpoena is directed;
- (2) A description of the books, papers, records or other real evidence requested;
- (3) The date, time, and location for production or inspection and copying;
- (4) The time within which a motion to quash or modify the subpoena must be filed;
- (5) The signature, address and telephone number of the executive secretary/director or designee;
- (6) The date of issuance;
- (7) A return of service.

d. Any person who is aggrieved or adversely affected by compliance with the subpoena who desires to challenge the subpoena shall, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified and may be accompanied by legal briefs or factual affidavits.

e. Upon receipt of a timely motion to quash or modify a subpoena, the board may request an administrative law judge to hold an argument and issue a decision, or the board may hold the argument and issue a decision. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

f. A person aggrieved by a ruling of an administrative law judge who desires to challenge the ruling shall appeal the ruling to the board in accordance with the procedure applicable to intra-agency appeals of proposed decisions set forth in rule 35.26(17A,124B,126,147,155A,205, 272C), provided that all of the time frames are reduced by one-half.

g. If the person contesting the subpoena is not the person under investigation, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the person under investigation, the board's decision is not final for purposes of judicial review until either the person is notified the investigation has been concluded with no formal action or there is a final decision in the contested case.

**35.13(2) *Issuance of subpoenas in a contested case.***

a. Subpoenas issued in a contested case may compel the attendance of witnesses at depositions or hearing, and may compel the production of books, papers, records, and other real evidence. A command to produce evidence or to permit inspection may be joined with a command to appear at deposition or hearing, or may be issued separately. Upon written request, the executive secretary/director or designee

shall issue subpoenas. A request for a subpoena of patient records must confirm the conditions described in subrule 35.13(1), paragraph “a,” prior to the issuance of the subpoena.

b. A request for a subpoena shall include the following information, as applicable, unless the subpoena is requested to compel testimony or documents for rebuttal or impeachment purposes:

- (1) The name, address, and telephone number of the person requesting the subpoena;
- (2) The name and address of the person to whom the subpoena shall be directed;
- (3) The date, time, and location at which the person shall be commanded to attend and give testimony;
- (4) Whether the testimony is requested in connection with a deposition or hearing;
- (5) A description of the books, papers, records, or other real evidence requested;
- (6) The date, time, and location for production or inspection and copying; and
- (7) In the case of a subpoena request for mental health records, confirmation that the conditions described in subrule 35.13(1), paragraph “a,” have been satisfied.

c. Each subpoena shall contain, as applicable:

- (1) The caption of the case;
- (2) The name, address, and telephone number of the person who requested the subpoena;
- (3) The name and address of the person to whom the subpoena is directed;
- (4) The date, time, and location at which the person is commanded to appear;
- (5) Whether the testimony is commanded in connection with a deposition or hearing;
- (6) A description of the books, papers, records or other real evidence the person is commanded to produce;
- (7) The date, time, and location for production or inspection and copying;
- (8) The time within which a motion to quash or modify the subpoena must be filed;
- (9) The signature, address, and telephone number of the executive secretary/director or designee;
- (10) The date of issuance;
- (11) A return of service.

d. Unless a subpoena is requested to compel testimony or documents for rebuttal or impeachment purposes, the executive secretary/director or designee shall mail copies of all subpoenas to the parties to the contested case. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena.

e. Any person who is aggrieved or adversely affected by compliance with the subpoena, or any party to the contested case who desires to challenge the subpoena, shall, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified, and may be accompanied by legal briefs or factual affidavits.

f. Upon receipt of a timely motion to quash or modify a subpoena, the board may request an administrative law judge to hold an argument and issue a decision, or the board may hold the argument and issue a decision. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

g. A person aggrieved by a ruling of an administrative law judge who desires to challenge the ruling shall appeal the ruling to the board in accordance with the procedure applicable to intra-agency appeals of proposed decisions set forth in rule 35.26(17A,124B,126,147,155A,205,272C), provided that all of the time frames are reduced by one-half.

h. If the person contesting the subpoena is not the person under investigation, the board’s decision is final for purposes of judicial review. If the person contesting the subpoena is the person under investigation, the board’s decision is not final for purposes of judicial review until there is a final decision in the contested case.

**35.13(3) Refusal to obey subpoena.** In the event of a refusal to obey a subpoena, the board may petition the district court for its enforcement. Upon proper showing, the district court shall order the person to obey the subpoena and, if the person fails to obey the order of the court, the person may be found guilty of contempt of court.